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7 UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY
REGION IX
9

10 In the matter of:) Docket No. FIFRA-09-2017-00 02
11)
12 J.R. Simplot Company,) CONSENT AGREEMENT
AND FINAL ORDER
13 Respondent.) pursuant to 40 C.F.R. §§ 22.13(b),
22.18(b)(2), and 22.18(b)(3)
14 _____)

15 I. CONSENT AGREEMENT

16 The United States Environmental Protection Agency (“EPA”), Region IX, and J.R.
17 Simplot Company (“Respondent”) agree to settle this matter and consent to the entry of this
18 Consent Agreement and Final Order (“CAFO”). This CAFO simultaneously initiates and
19 concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).
20

21 A. AUTHORITY AND PARTIES

22 1. This is a civil administrative action brought pursuant to Section 14(a)(1) of the Federal
23 Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136l(a)(1), for the assessment
24 of a civil administrative penalty against Respondent for violations of Sections 12(a)(1)(E) and
25 12(a)(2)(S) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(E) and 136j(a)(2)(S).
26

27 2. Complainant is the Director of the Enforcement Division, EPA Region IX, who has
28 been duly delegated to commence and settle an enforcement action in this matter.

3. Respondent is J.R. Simplot Company, a Nevada corporation with headquarters offices
located at 999 W. Main Street in Boise, Idaho, 83702-9009.

1 12. Under Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), it is unlawful for any
2 person to violate any regulation issued under Sections 3(a) or 19 of FIFRA, 7 U.S.C. §§ 136a(a)
3 and 136q.

4 13. Pursuant to FIFRA, 7 U.S.C. §§ 136-136y, the EPA Administrator promulgated
5 regulations governing the labeling requirements for pesticides and devices, which are codified at
6 40 C.F.R. Part 156.

7 14. Pursuant to Sections 3, 8, 19 and 25 of FIFRA, 7 U.S.C. §§ 136a, 136f, 136q and
8 136w, the EPA Administrator promulgated regulations pertaining to standards for pesticide
9 containers and pesticide containment structures (“the Container/Containment regulations”),
10 which are codified at 40 C.F.R. Part 165 and 40 C.F.R. §§ 156.140-156.159.

11 15. “Agricultural pesticide” means any pesticide product labeled for use in or on a farm,
12 forest, nursery, or greenhouse. 40 C.F.R. § 165.3.

13 16. “Appurtenance” means any equipment or device which is used for the purpose of
14 transferring a pesticide from a stationary pesticide container or to any refillable container,
15 including but not limited to, hoses, fittings, plumbing, valves, gauges, pumps and metering
16 devices. 40 C.F.R. § 165.3.

17 17. “Containment pad” means any structure that is designed and constructed to intercept
18 and contain pesticides, rinsates, and equipment wash water at a pesticide dispensing area. 40
19 C.F.R. § 165.3.

20 18. “Containment structure” means either a secondary containment unit or a containment
21 pad. 40 C.F.R. § 165.3.

22 19. “Establishment” means any site where a pesticidal product, active ingredient, or
23 device is produced, regardless of whether such site is independently owned or operated, and
24 regardless of whether such site is domestic and producing a pesticidal product for export only, or
25 whether the site is foreign and producing any pesticidal product for import into the United States.
26 40 C.F.R. § 165.3.

27 20. “Facility” means all buildings, equipment, structures, and other stationary items
28 which are located on a single site or on contiguous or adjacent sites and which are owned or

1 operated by the same person (or by any person who controls, who is controlled by, or who is
2 under common control with such person). 40 C.F.R. § 165.3.

3 21. "Operator" means any person in control of, or having responsibility for, the daily
4 operation of a facility at which a containment structure is located. 40 C.F.R. § 165.3.

5 22. "Owner" means any person who owns a facility at which a containment structure is
6 required. 40 C.F.R. § 165.3.

7 23. "Pesticide dispensing area" means an area in which pesticide is transferred out of or
8 into a container. 40 C.F.R. § 165.3.

9 24. "Produce" means to manufacture, prepare, propagate, compound, or process any
10 pesticide, including any pesticide produced pursuant to Section 5 of the Act, and any active
11 ingredient or device, or to package, repackage, label, relabel, or otherwise change the container
12 of any pesticide or device. 40 C.F.R. § 165.3.

13 25. "Producer" means any person, as defined by the Act, who produces any pesticide,
14 active ingredient, or device (including packaging, repackaging, labeling, and relabeling). 40
15 C.F.R. § 165.3.

16 26. "Refilling establishment" means an establishment where the activity of repackaging
17 pesticide product into refillable containers occurs. 40 C.F.R. § 165.3.

18 27. "Refillable container" means a container that is intended to be filled with pesticide
19 more than once for sale or distribution. 40 C.F.R. § 165.3.

20 28. "Refiller" means a person who engages in the activity of repackaging pesticide
21 product into refillable containers. 40 C.F.R. § 165.3.

22 29. "Repackage" means, for the purposes of this part, to transfer a pesticide formulation
23 from one container to another without a change in the composition of the formulation, the
24 labeling content, or the product's EPA registration number, for sale or distribution. 40 C.F.R. §
25 165.3.

26 30. "Stationary pesticide container" means a refillable container that is fixed at a single
27 facility or establishment or, if not fixed, remains at the facility or establishment for at least 30
28 consecutive days, and that holds pesticide during the entire time. 40 C.F.R. § 165.3.

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C. ALLEGED VIOLATIONS

31. Respondent is a “person” as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and as such is subject to FIFRA and the regulations promulgated thereunder.

32. Respondent is an “owner” and “operator” of five “facilities” that are each “establishments,” as those terms are defined by 40 C.F.R. § 165.3, located at: (1) 25730 Avenue 96 in Terra Bella, California (the “Terra Bella Establishment”); (2) 4863 Carpenter Road in Stockton, California (the “Stockton Establishment”); (3) 21817 Fresno Coalinga Road in Five Points, California (the “Five Points Establishment”); (4) 2947 Highway 20 in Colusa, California (the “Colusa Establishment”); and (5) 36148 S. Burke Drive in Traver, California (the “Traver Establishment”).

33. At all times relevant to this CAFO, Respondent was a “refiller” that “repackaged” and dispensed the following “agricultural pesticides” at the following “refilling establishments” whose principal business is retail sale, as those terms are defined by 40 C.F.R. § 165.3:

a. PHT 415 Supreme Spray Oil (EPA Reg. No. 7001-7777) and PHT Supreme Spray Oil (EPA Reg. No. 7001-7778), two pesticides for which Respondent is the registrant, at the Terra Bella, Stockton, and Five Points Establishments;

b. Roundup PowerMax (EPA Reg. No. 524-549) at the Stockton, Colusa, and Traver Establishments;

c. Touchdown HiTech (EPA Reg. No. 100-1182) and Roundup WeatherMax (EPA Reg. No. 524-537) at the Traver Establishment; and

d. Gramoxone SL 2.0 (EPA Reg. No. 100-1431) at the Colusa Establishment.

As such, these establishments and the agricultural pesticides they repackaged are subject to the Container/Containment regulations.

34. At all times relevant to this CAFO, Respondent repackaged the agricultural pesticide, Telone II (EPA Reg. No. 62719-32), at the Traver Establishment in order to apply the pesticide for compensation. As such, this establishment and the agricultural pesticide it repackaged are subject to the Container/Containment regulations.

1 35. Owners or operators of refilling establishments who repackaging agricultural pesticides
2 and whose principal business is retail sale and that have a stationary pesticide container or a
3 pesticide dispensing (including container refilling) area must comply with the secondary
4 containment requirements of the Container/Containment regulations. 40 C.F.R. § 165.80(b)(1).

5 36. At all times relevant to this CAFO, the Terra Bella, Stockton, Five Points, Colusa,
6 and Traver Establishments included areas where agricultural pesticides were dispensed from a
7 transport vehicle for the purposes of filling a refillable container. Each of these areas was both a
8 “pesticide dispensing area” and a “containment pad,” as those terms are defined by 40 C.F.R. §
9 165.3.

10 37. The containment pads in the pesticide dispensing areas at the Terra Bella, Stockton,
11 Five Points, Colusa, and Traver Establishments were constructed on or before November 16,
12 2006 and are each “existing containment structures,” as that term is defined by 40 C.F.R. §
13 165.83(b).

14 38. Inspections were conducted by a California Department of Pesticide Regulation
15 (“CDPR”) inspector: (1) on or about January 19, 2016, at the Terra Bella Establishment; (2) on
16 or about January 8, 2015, at the Stockton Establishment; (3) on or about February 3, 2015, at the
17 Five Points Establishment; and (4) on or about November 19, 2015, at the Colusa Establishment.
18 In addition, an inspection was conducted by an EPA Region IX inspector on or about March 24,
19 2015, at the Traver Establishment.

20 TERRA BELLA ESTABLISHMENT

21 COUNTS 1 and 2: Distribution or Sale of Misbranded Pesticides

22 39. When pesticide products are stored in bulk containers, whether mobile or stationary,
23 which remain in the custody of the user, a copy of the label or labeling, including all appropriate
24 directions for use, must be securely attached to the container in the immediate vicinity of the
25 discharge control valve. 40 C.F.R. § 156.10(a)(4)(ii)(B). Every pesticide product shall bear a
26 label containing, inter alia, the net contents as prescribed in paragraph (d) of this section. 40
27 C.F.R. § 156.10(a)(1)(iii). If the pesticide is a liquid, the net content statement shall be in terms
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1 of liquid measure at 68° F (20° C) and shall be expressed in conventional American units of
2 fluid ounces, pints, quarts, and gallons. 40 C.F.R. § 156.10(d)(2).

3 40. On or about January 19, 2016, Respondent “distributed or sold” the pesticide, PHT
4 415 Supreme Spray Oil, in Tank 15 and the pesticide, PHT Supreme Spray Oil, in Tank 25 at the
5 Terra Bella Establishment, as that term is defined by Section 2(gg) of FIFRA, 7 U.S.C. §
6 136(gg), by holding the pesticides for distribution, sale, or shipment.

7 41. On or about January 19, 2016, Respondent failed to have a label attached to Tanks 15
8 and 25 at the Terra Bella Establishment that marked or identified the net contents in terms of
9 liquid measure, as required by 40 C.F.R. §§ 156.10(a)(4)(ii)(B), 156.10(a)(1)(iii), and
10 156.10(d)(2).

11 42. Respondent’s failure to mark or identify the net contents in terms of liquid measure
12 on the labels attached to Tanks 15 and 25 at the Terra Bella Establishment, as required by 40
13 C.F.R. §§ 156.10(a)(4)(ii)(B), 156.10(a)(1)(iii), and 156.10(d)(2), constitutes “misbranding,” as
14 that term is defined by Section 2(q)(2)(C)(iii) of FIFRA, 7 U.S.C. § 136(q)(2)(C)(iii).

15 43. Consequently, on or about January 19, 2016, Respondent’s distributions or sales of
16 the pesticide, PHT 415 Supreme Spray Oil, in Tank 15 and the pesticide, PHT Supreme Spray
17 Oil, in Tank 25 at the Terra Bella Establishment constitute two violations of Section 12(a)(1)(E)
18 of FIFRA, 7 U.S.C. § 136j(a)(1)(E), which prohibits a person from distributing or selling a
19 misbranded pesticide.

20 COUNTS 3 and 4: Failure to Properly Identify the Container Type By Including the Required
21 Statements

22 44. For products other than plant-incorporated protectants, either a “nonrefillable
23 container” or a “refillable container” statement, as applicable, must be placed on the label or
24 container. 40 C.F.R. § 156.140. For “refillable containers,” one of the following statements is
25 required [except for inapplicable exemptions]: (1) “Refillable Container. Refill this container
26 with pesticide only. Do not reuse this container for any other purpose,” or (2) “Refillable
27 Container” Refill this container with [*common chemical name*] only. Do not reuse this container
28 for any other purpose.” 40 C.F.R. § 156.140(b).

1 refillable containers containing either PHT 415 Supreme Spray Oil or PHT Supreme Spray Oil,
2 as required by 40 C.F.R. § 156.156.

3 COUNTS 7 and 8: Failure to Anchor or Elevate Stationary Containers of Liquid Pesticides

4 52. One of the specific design requirements for existing secondary containment units is
5 that the owner or operator must either anchor or elevate each stationary container of liquid
6 pesticide protected by an existing secondary containment unit to prevent flotation in the event
7 that the secondary containment unit fills with liquid. 40 C.F.R. § 165.87(d).

8 53. On or about January 19, 2016, Tanks 15 (containing PHT 415 Supreme Spray Oil)
9 and 25 (containing PHT Supreme Spray Oil) were in an existing secondary containment unit but
10 were neither anchored nor elevated.

11 54. On or about January 19, 2016, Respondent failed to either anchor or elevate Tanks 15
12 and 25, as required by 40 C.F.R. § 165.87(d).

13 55. On or about January 19, 2016, Respondent violated Section 12(a)(2)(S) of FIFRA, 7
14 U.S.C. § 136j(a)(2)(S), by failing to either anchor or elevate Tanks 15 and 25, as required by 40
15 C.F.R. § 165.87(d).

16 STOCKTON ESTABLISHMENT

17 COUNTS 9 and 10: Distribution and Sale of a Misbranded Pesticide

18 56. On or about January 8, 2015, Respondent “distributed or sold” the pesticide, PHT
19 Supreme Spray Oil, in Tank 5 and the pesticide, PHT 415 Supreme Spray Oil, in Tank 7 at the
20 Stockton Establishment, as that term is defined by Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg),
21 by holding the pesticides for distribution, sale, or shipment.

22 57. On or about January 8, 2015, Respondent failed to have a label attached to Tanks 5
23 and 7 at the Stockton Establishment that marked or identified the net contents in terms of liquid
24 measure, as required by 40 C.F.R. §§ 156.10(a)(4)(ii)(B), 156.10(a)(1)(iii), and 156.10(d)(2).

25 58. Respondent’s failure to mark or identify the net contents in terms of liquid measure
26 on the labels attached to Tanks 5 and 7 at the Stockton Establishment, as required by 40 C.F.R.
27 §§ 156.10(a)(4)(ii)(B), 156.10(a)(1)(iii), and 156.10(d)(2), constitutes “misbranding,” as that
28 term is defined by Section 2(q)(2)(C)(iii) of FIFRA, 7 U.S.C. § 136(q)(2)(C)(iii).

1 59. Consequently, on or about January 8, 2015, Respondent's distributions or sales of the
2 pesticide, PHT Supreme Spray Oil, in Tank 5 and the pesticide, PHT 415 Supreme Spray Oil, in
3 Tank 7 at the Stockton Establishment constitute two violations of Section 12(a)(1)(E) of FIFRA,
4 7 U.S.C. § 136j(a)(1)(E), which prohibits a person from distributing or selling a misbranded
5 pesticide.

6 COUNT 11: Distribution and Sale of a Misbranded Pesticide

7 60. When pesticide products are stored in bulk containers, whether mobile or stationary,
8 which remain in the custody of the user, a copy of the label or labeling, including all appropriate
9 directions for use, must be securely attached to the container in the immediate vicinity of the
10 discharge control valve. 40 C.F.R. § 156.10(a)(4)(ii)(B). Every pesticide product shall bear a
11 label containing, inter alia, the producing establishment number as prescribed in paragraph (f) of
12 this section. 40 C.F.R. § 156.10(a)(1)(v). The producing establishment registration number
13 preceded by the phrase "EPA Est.", of the final establishment at which the product was produced
14 may appear in any suitable location on the label or immediate container. 40 C.F.R. § 156.10(f).

15 61. On or about January 8, 2015, Respondent "distributed or sold" the pesticide,
16 Roundup PowerMax, in Tank 11 at the Stockton Establishment, as that term is defined by
17 Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), by holding the pesticide for distribution, sale, or
18 shipment.

19 62. On or about January 8, 2015, Respondent failed to have a label attached to Tank 11
20 at the Stockton Establishment that marked or identified the EPA producing establishment
21 registration number of the final establishment at which the bulk product, Roundup PowerMax,
22 was produced, as required by 40 C.F.R. §§ 156.10(a)(4)(ii)(B), 156.10(a)(1)(v), and 156.10(f).

23 63. Respondent's failure to mark or identify the EPA producing establishment
24 registration number of the final establishment at which the bulk product, Roundup PowerMax,
25 was produced on the label attached to Tank 11 at the Stockton Establishment, as required by 40
26 C.F.R. §§ 156.10(a)(4)(ii)(B), 156.10(a)(1)(v), and 156.10(f), constitutes "misbranding," as that
27 term is defined by Section 2(q)(1)(D) of FIFRA, 7 U.S.C. § 136(q)(1)(D).

1 64. Consequently, on or about January 8, 2015, Respondent's distribution or sale of the
2 pesticide, Roundup PowerMax, in Tank 11 at the Stockton Establishment constitutes a violation
3 of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), which prohibits a person from
4 distributing or selling a misbranded pesticide.

5 COUNTS 12 to 15: Failure to Anchor or Elevate Stationary Containers of Liquid Pesticides

6 65. On or about January 8, 2015, Tanks 4 and 5 (containing PHT Supreme Spray Oil)
7 and Tanks 7 and 8 (containing PHT 415 Supreme Spray Oil) were in an existing secondary
8 containment unit but were neither anchored nor elevated.

9 66. On or about January 8, 2015, Respondent failed to either anchor or elevate Tanks 4,
10 5, 7, and 8, as required by 40 C.F.R. § 165.87(d).

11 67. On or about January 8, 2015, Respondent violated Section 12(a)(2)(S) of FIFRA, 7
12 U.S.C. § 136j(a)(2)(S), by failing to either anchor or elevate Tanks 4, 5, 7, and 8, as required by
13 40 C.F.R. § 165.87(d).

14 FIVE POINTS ESTABLISHMENT

15 COUNT 16: Failure to Keep Containment Structure Liquid Tight

16 68. One of the material specifications for all existing containment structures (including
17 containment pads) is that the structures must be liquid-tight with cracks, seams and joints
18 appropriately sealed. 40 C.F.R. § 165.87(a)(1).

19 69. On or about February 3, 2015, the containment pad (*i.e.*, containment structure)
20 located in the loading area at the Five Points Establishment had unsealed cracks.

21 70. On or about February 3, 2015, Respondent failed to keep all existing containment
22 structures at the Five Points Establishment liquid-tight with cracks, seams and joints
23 appropriately sealed, as required by 40 C.F.R. § 165.87(a)(1).

24 71. On or about February 3, 2015, Respondent violated Section 12(a)(2)(S) of FIFRA, 7
25 U.S.C. § 136j(a)(2)(S), by failing to keep all existing containment structures at the Five Points
26 Establishment liquid-tight with cracks, seams and joints appropriately sealed, as required by 40
27 C.F.R. § 165.87(a)(1).

1 TRAVER ESTABLISHMENT

2 COUNT 20: Distribution and Sale of a Misbranded Pesticide

3 79. On or about March 24, 2015, Respondent “distributed or sold” the pesticide, Telone
4 II, in the Telone II Tank at the Traver Establishment, as that term is defined by Section 2(gg) of
5 FIFRA, 7 U.S.C. § 136(gg), by holding the pesticide for distribution, sale, or shipment.

6 80. On or about March 24, 2015, Respondent failed to have a label attached to the Telone
7 II Tank at the Traver Establishment that marked or identified the net contents in terms of liquid
8 measure, as required by 40 C.F.R. §§ 156.10(a)(4)(ii)(B), 156.10(a)(1)(iii), and 156.10(d)(2).

9 81. Respondent’s failure to mark or identify the net contents in terms of liquid measure
10 on the label attached to the Telone II Tank at the Traver Establishment, as required by 40 C.F.R.
11 §§ 156.10(a)(4)(ii)(B), 156.10(a)(1)(iii), and 156.10(d)(2), constitutes “misbranding,” as that
12 term is defined by Section 2(q)(2)(C)(iii) of FIFRA, 7 U.S.C. § 136(q)(2)(C)(iii).

13 82. Consequently, on or about March 24, 2015, Respondent’s distribution or sale of the
14 pesticide, Telone II, in the Telone II Tank at the Traver Establishment constitutes a violation of
15 Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), which prohibits a person from
16 distributing or selling a misbranded pesticide.

17 COUNT 21: Failure to Keep Containment Structure Liquid Tight

18 83. On or about March 24, 2015, the containment pads (*i.e.*, containment structures)
19 located in the Refill Center and NW Tank Farm at the Traver Establishment had unsealed cracks.

20 84. On or about March 24, 2015, Respondent failed to keep all existing containment
21 structures at the Traver Establishment liquid-tight with cracks, seams and joints appropriately
22 sealed, as required by 40 C.F.R. § 165.87(a)(1).

23 85. On or about March 24, 2015, Respondent violated Section 12(a)(2)(S) of FIFRA, 7
24 U.S.C. § 136j(a)(2)(S), by failing to keep all existing containment structures at the Traver
25 Establishment liquid-tight with cracks, seams and joints appropriately sealed, as required by 40
26 C.F.R. § 165.87(a)(1).

1 COUNTS 22 and 23: Failure to Anchor or Elevate Stationary Containers of Liquid Pesticides

2 86. On or about March 24, 2015, Tank 21 (containing Roundup PowerMax) and the
3 Telone II Tank were in existing secondary containment units but were neither anchored nor
4 elevated.

5 87. On or about March 24, 2015, Respondent failed to either anchor or elevate the above-
6 mentioned two tanks, as required by 40 C.F.R. § 165.87(d).

7 88. On or about March 24, 2015, Respondent violated Section 12(a)(2)(S) of FIFRA, 7
8 U.S.C. § 136j(a)(2)(S), by failing to either anchor or elevate the above-mentioned two tanks, as
9 required by 40 C.F.R. § 165.87(d).

10 D. RESPONDENT'S ADMISSIONS

11 89. In accordance with 40 C.F.R. § 22.18(b)(2) and for the purpose of this proceeding,
12 Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over
13 Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section
14 I.C of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the
15 assessment of the civil administrative penalty under Section I.E of this CAFO; (iv) waives any
16 right to contest the allegations contained in this CAFO; and (v) waives the right to appeal the
17 proposed Final Order contained in this CAFO.

18 E. CIVIL ADMINISTRATIVE PENALTY

19 90. In final settlement of the violations of FIFRA specifically alleged in Section I.C of
20 this CAFO, Respondent shall pay a civil administrative penalty of NINETY-EIGHT
21 THOUSAND, NINE HUNDRED, AND SIXTY DOLLARS (\$98,960). Respondent shall pay
22 this civil penalty no later than thirty (30) calendar days from the effective date of this CAFO.
23 The civil penalty shall be paid by remitting a certified or cashier's check, including the name and
24 docket number of this case, for the amount, payable to "Treasurer, United States of America," (or
25 be paid by one of the other methods listed below) and sent as follows:

26 Regular Mail:

27 U.S. Environmental Protection Agency
28 Fines and Penalties
 Cincinnati Finance Center

1 PO Box 979077
2 St. Louis, MO 63197-9000

3 Wire Transfers:

4 Wire transfers must be sent directly to the Federal Reserve Bank in New
5 York City with the following information:

6 Federal Reserve Bank of New York
7 ABA = 021030004
8 Account = 68010727
9 SWIFT address = FRNYUS33
10 33 Liberty Street
11 New York, NY 10045
12 Beneficiary = U.S. Environmental Protection Agency

13 Certified or Overnight Mail:

14 U.S. Environmental Protection Agency
15 1005 Convention Plaza
16 Mail Station SL-MO-C2-GL
17 ATTN Box 979077
18 St. Louis, MO 63101

19 ACH (also known as Remittance Express or REX):

20 Automated Clearinghouse (ACH) payments to EPA can be made through
21 the U.S. Treasury using the following information:

22 U.S. Treasury REX/Cashlink ACH Receiver
23 ABA = 051036706
24 Account = 31006, Environmental Protection Agency
25 CTX Format Transaction Code 22 – checking

26 Physical Location of U.S. Treasury facility:
27 5700 Rivertech Court
28 Riverdale, MD 20737

Remittance Express (REX) = (866) 234-5681

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov
Enter "SFO 1.1" in the search field
Open form and complete required fields

If clarification regarding a particular method of payment remittance is
needed, contact the EPA's Cincinnati Finance Center at (513) 487-2091.

Concurrently, a copy of each check, or notification that the payment has been made by one of the
other methods listed above, including proof of the date payment was made, shall be sent with a

1 transmittal letter, indicating Respondent's name, the case title, and docket number, to the
2 following addresses:

3 Regional Hearing Clerk
4 Office of Regional Counsel (ORC-1)
5 U.S. Environmental Protection Agency, Region IX
6 75 Hawthorne Street
7 San Francisco, CA 94105

8 Panah Stauffer
9 SDWA/FIFRA Section
10 Enforcement Division (ENF-3-3)
11 U.S. Environmental Protection Agency, Region IX
12 75 Hawthorne Street
13 San Francisco, CA 94105

14 Edgar P. Coral
15 Office of Regional Counsel (ORC-2)
16 U.S. Environmental Protection Agency, Region IX
17 75 Hawthorne Street
18 San Francisco, CA 94105

19 91. Respondent shall not use payment of any penalty under this CAFO as a tax deduction
20 from Respondent's federal, state, or local taxes, nor shall Respondent allow any other person to
21 use such payment as a tax deduction.

22 92. If Respondent fails to pay the assessed civil administrative penalty of NINETY-
23 EIGHT THOUSAND, NINE HUNDRED, AND SIXTY DOLLARS (\$98,960) as identified in
24 Paragraph 90 by the deadline specified in that Paragraph, then Respondent shall also pay a
25 stipulated penalty to EPA upon EPA's written request. The amount of the stipulated penalty will
26 be TWENTY-FOUR THOUSAND, SEVEN HUNDRED, AND FORTY DOLLARS (\$24,740)
27 and will be immediately due and payable upon EPA's written request, together with the initially
28 assessed civil administrative penalty of NINETY-EIGHT THOUSAND, NINE HUNDRED,
AND SIXTY DOLLARS (\$98,960), resulting in a total penalty due of ONE HUNDRED AND
TWENTY-THREE THOUSAND AND SEVEN HUNDRED DOLLARS (\$123,700). Failure to
pay the civil administrative penalty specified in Paragraph 90 by the deadline specified in that
Paragraph may also lead to any or all of the following actions:

(1) EPA may refer the debt to a credit reporting agency, a collection
agency, or to the Department of Justice for filing of a collection action in the appropriate United

1 States District Court. 40 C.F.R. §§ 13.13, 13.14 and 13.33. The validity, amount, and
2 appropriateness of the assessed penalty or of this CAFO is not subject to review in any such
3 collection proceeding.

4 (2) The U.S. Government may collect the debt by administrative offset
5 (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a
6 person to satisfy the debt the person owes the U.S. Government), which includes, but is not
7 limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40
8 C.F.R. Part 13, Subparts C and H.

9 (3) Pursuant to 40 C.F.R. § 13.17, EPA may either: (i) suspend or revoke
10 Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing
11 business with EPA or engaging in programs EPA sponsors or funds.

12 (4) Pursuant to 31 U.S.C. § 3701 *et seq.* and 40 C.F.R. Part 13, the U.S.
13 Government may assess interest, administrative handling charges, and nonpayment penalties
14 against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the
15 civil administrative penalty specified in Paragraph 90 by the deadline specified in that Paragraph.

16 (a) Interest. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. §
17 13.11(a)(1), any unpaid portion of the assessed penalty shall bear interest at the rate established
18 according to 26 U.S.C. § 6621(a)(2) from the effective date of this CAFO, provided, however,
19 that no interest shall be payable on any portion of the assessed penalty that is paid within thirty
20 (30) days of the effective date of this CAFO.

21 (b) Administrative Handling Charges. Pursuant to 31 U.S.C. §
22 3717(e)(1) and 40 C.F.R. § 13.11(b), Respondent shall pay a monthly handling charge, based on
23 either actual or average cost incurred (including both direct and indirect costs), for every month
24 in which any portion of the assessed penalty is more than thirty (30) days past due.

25 (c) Nonpayment Penalties. Pursuant to 31 U.S.C. § 3717(e)(2)
26 and 40 C.F.R. § 13.11(c), a monthly penalty charge, not to exceed six percent (6%) annually,
27 may be assessed on all debts more than ninety (90) days delinquent.
28

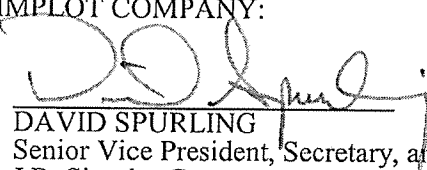
J. BINDING EFFECT

98. The undersigned representative of Complainant and the undersigned representative of Respondent each certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to bind the party he or she represents to this CAFO.

99. The provisions of this CAFO shall apply to and be binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.


FOR RESPONDENT J.R. SIMPLOT COMPANY:

12 JAN 2017
DATE


DAVID SPURLING
Senior Vice President, Secretary, and General Counsel
J.R. Simplot Company
999 W. Main Street, Suite 1300
Boise, ID 83702-9009

FOR COMPLAINANT EPA:

3/21/17
DATE



KATHLEEN H. JOHNSON
Director
Enforcement Division
U.S. Environmental Protection Agency, Region IX

1 II. FINAL ORDER

2 EPA and J.R. Simplot Company having entered into the foregoing Consent Agreement,

3 IT IS HEREBY ORDERED that this CAFO (Docket No. FIFRA-09-2017-0003) be
4 entered, and Respondent shall pay a civil administrative penalty in the amount of NINETY-
5 EIGHT THOUSAND, NINE HUNDRED, AND SIXTY DOLLARS (\$98,960), and comply with
6 the terms and conditions set forth in the Consent Agreement.

7
8
9 03/21/17
DATE

10 
STEVEN L. JAWGIEL
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order, (Docket No FIFRA-09-2017-0002) was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

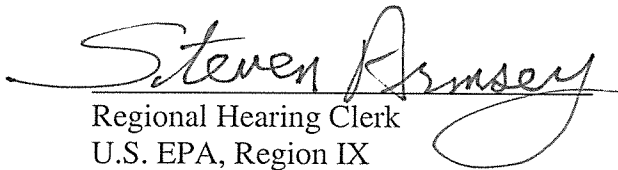
A copy was mailed via CERTIFIED MAIL to:

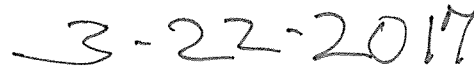
David Spurling
Senior Vice President, Secretary and General Counsel
J.R. Simplot Company
999 W. Main Street, Suite 1300
Boise, ID 83702-9009

CERTIFIED MAIL NUMBER: 7016 1370 0000 2235 1138

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Edgar Coral
Assistant Regional Counsel (ORC-2)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105


Regional Hearing Clerk
U.S. EPA, Region IX


Date